

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 202
Committee Substitute Favorable 3/22/99

Short Title: Amend Professional Corp. Act/AB.

(Public)

Sponsors:

Referred to:

March 2, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO BUSINESS IN THIS STATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-6 reads as rewritten:

"§ 55B-6. Capital stock.

(a) Except as provided in ~~subsection (b),~~ subsection (b) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer ~~such~~ shares of stock issued to ~~him~~ the shareholder only to another ~~such~~ licensee. No share or shares of any stock of ~~such~~ a professional corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee ~~of such shares~~ is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, and 89E, for ~~non-licensed~~ nonlicensed employees of ~~such~~ the corporation to own not more than

1 one-third of the total issued and outstanding shares of ~~such corporation~~ the corporation;
2 and provided further, with respect to a professional corporation rendering services as
3 defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee
4 retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as
5 amended (or any successor section), is deemed for purposes of this section to be a
6 licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any
7 additional conditions that the appropriate licensing board may by rule or order impose in
8 the public interest, it shall be lawful for individuals who are not licensees but who
9 perform professional services on behalf of a professional corporation in another
10 jurisdiction in which the corporation maintains an office, and who are duly licensed to
11 perform professional services under the laws of the other jurisdiction, to be shareholders
12 of the corporation so long as there is at least one shareholder who is a licensee as defined
13 in G.S. 55B-2, and the corporation renders its professional services in the State only
14 through those shareholders that are licensed in North Carolina. Upon the transfer of any
15 shares of such corporation to a ~~non-licensed~~ nonlicensed employee of such corporation,
16 the corporation shall inform the appropriate licensing board of the name and address of
17 the transferee and the number of shares issued to ~~such~~ the nonprofessional transferee. ~~Any~~
18 share of stock of such corporation issued or transferred The issuance or transfer of any share
19 of stock in violation of this section shall be null and is void. No shareholder of a
20 professional corporation shall enter into a voting trust agreement or any other type of
21 agreement vesting in another person the authority to exercise the voting power of any ~~or~~
22 all of his stock of the stock of a professional corporation.

23 ~~(b) A professional corporation formed pursuant to this Chapter may issue one~~
24 ~~hundred percent (100%) of its capital stock to another professional corporation in order~~
25 ~~for that corporation (the distributing corporation) to distribute the stock of the controlled~~
26 ~~corporation to one or more shareholders of the distributing corporation in accordance~~
27 ~~with section 355 of the Internal Revenue Code of 1986, as amended. The distributing~~
28 ~~corporation shall distribute the stock of the controlled corporation within 30 days after~~
29 ~~the stock was issued to the distributing corporation. A share of stock of the controlled~~
30 ~~corporation that has not been transferred to a licensee more than 30 days after it was~~
31 ~~issued to the distributing corporation is void.~~

32 (b) A professional corporation formed pursuant to this Chapter may issue one
33 hundred percent (100%) of its capital stock to another professional corporation in order
34 for that corporation (the distributing corporation) to distribute in accordance with section
35 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the
36 stock of the controlled corporation to one or more shareholders of the distributing
37 corporation authorized under this section to hold the shares. The distributing corporation
38 shall distribute the stock of the controlled corporation within 30 days after the stock is
39 issued to the distributing corporation. A share of stock of the controlled corporation that
40 is not transferred in accordance with this subsection within 30 days after the share was
41 issued to the distributing corporation is void."

42 Section 2. G.S. 55B-16 reads as rewritten:

43 "**§ 55B-16. Foreign professional corporations.**

1 (a) A foreign professional corporation may apply for a certificate of authority to
2 transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of
3 the General Statutes provided that:

- 4 (1) The corporation obtains a certificate of registration from the appropriate
5 licensing board or boards in this State;
- 6 (2) With respect to each professional service practiced through the
7 corporation in this State, at least one director and one officer shall be a
8 licensee of the licensing board which regulates the profession in this
9 State;
- 10 (3) Each officer, employee, and agent of the corporation who will provide
11 professional services to persons in this State shall be a licensee of the
12 appropriate licensing board in this State;
- 13 (4) The corporation shall be subject to the applicable rules and regulations
14 adopted by, and all the disciplinary powers of, the appropriate licensing
15 board or boards in this State;
- 16 (5) The corporation's activities in this State shall be limited as provided by
17 G.S. 55B-14; and
- 18 (6) The application for certificate of authority, in addition to the
19 requirements of G.S. 55-15-03, shall set forth the personal services to be
20 rendered by the foreign professional corporation and the individual or
21 individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and
22 shall be accompanied by a certification by the appropriate licensing
23 board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and
24 by additional certifications as may be required to establish that the
25 corporation is a 'foreign professional corporation' as defined in G.S.
26 55B-16(b).

27 (b) For purposes of this section, 'foreign professional corporation' means a
28 corporation for profit that:

- 29 (1) Is incorporated under a law other than the law of this State;
- 30 (2) Is incorporated for the ~~sole and specific~~ purpose of rendering professional
31 services of the type that if rendered in this State would require the
32 obtaining of a license from a licensing board pursuant to the statutory
33 provisions referred to in G.S. 55B-2(6); and
- 34 (3) Has as its shareholders only individuals who:
- 35 a. Qualify to hold shares of a corporation organized under this
36 Chapter;
- 37 b. Are licensed to provide professional services as defined in G.S.
38 55B-2(6) in a state in which the corporation is incorporated or is
39 authorized to transact business, provided that such professional
40 services are the same as the professional service rendered by the
41 corporation; or
- 42 c. Are nonlicensed employees of a corporation rendering services
43 of the type defined in Chapters 83A, 89A, 89C, and 89E of the

1 General Statutes, provided that all such nonlicensed employees
2 own no more than one-third of the total issued and outstanding
3 shares of such corporation in the aggregate.

4 **(b1)** With respect to a professional corporation rendering services as defined in
5 Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan
6 qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any
7 succeeding section), is deemed for purposes of this section to be an individual licensee if
8 the trustee or trustees of the plan are licensees.

9 (c) A foreign professional corporation with a valid certificate ~~of~~ of authority has
10 the same but no greater rights and ~~has the same but no greater~~ privileges as, and is subject
11 to the same duties, restrictions, penalties, and liabilities now or later imposed on, a
12 domestic professional corporation of like character, except that the provisions of G.S.
13 55B-6 and G.S. 55B-7 ~~shall~~ do not apply."

14 Section 3. This act is effective when it becomes law.